

## **Assembly Bill No. 410**

### **CHAPTER 495**

An act to amend Section 11346.5 of, and to add Section 11346.6 to, the Government Code, relating to regulations.

[Approved by Governor October 5, 2011. Filed with  
Secretary of State October 6, 2011.]

#### **LEGISLATIVE COUNSEL'S DIGEST**

AB 410, Swanson. Regulations: adoption: disability access.

Existing state and federal law prohibits the exclusion of a qualified individual with a disability, by reason of that disability, from participation in or equal access to the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by a public entity. Federal regulations require a public entity to take appropriate steps to ensure that communications with participants and members of the public with disabilities are as effective as communications with others. These regulations also require a public entity to furnish appropriate auxiliary aids and services where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a service, program, or activity conducted by a public entity.

Existing law, the Administrative Procedure Act, governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. Existing law requires an agency to publish a notice of proposed action that includes specified information, at least 45 days prior to a hearing and the close of the public comment period.

This bill would require an agency that proposes certain regulations, upon a request from a person with a visual disability or other disability for which effective communication is required under state or federal law, to provide that person a narrative description of the proposed regulation, as prescribed, and would provide for an extended public comment period for that person. The bill would make these requirements applicable to an agency only for purposes of a proposed regulation until that regulation is filed with the Secretary of State or until the agency otherwise concludes the regulatory adoption process. The bill would also require an agency to include within the notice of proposed action a specified statement regarding the availability of narrative descriptions for persons with visual or other specified disabilities. The bill would require an agency that adopts a regulation that is subject to the requirements of the bill to submit a report to the Governor and certain committees of the Legislature on or before February 1, 2014, as specified.

*The people of the State of California do enact as follows:*

SECTION 1. (a) The Legislature finds and declares all of the following:

(1) Pursuant to the requirements of Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12131 et seq.) and Section 11135 of the Government Code, persons with disabilities are guaranteed timely, effective communication of written documents that allows independent access to these documents.

(2) The manner in which proposed regulations of a state agency are transmitted to the public does not allow for this timely, effective communication of the content of the proposed regulations to persons with visual or other disabilities.

(b) It is the intent of the Legislature in enacting this act to provide a mechanism for compliance with state and federal effective communication requirements with respect to the adoption of proposed regulations by state agencies.

SEC. 2. Section 11346.5 of the Government Code is amended to read:

11346.5. (a) The notice of proposed adoption, amendment, or repeal of a regulation shall include the following:

(1) A statement of the time, place, and nature of proceedings for adoption, amendment, or repeal of the regulation.

(2) Reference to the authority under which the regulation is proposed and a reference to the particular code sections or other provisions of law that are being implemented, interpreted, or made specific.

(3) An informative digest drafted in plain English in a format similar to the Legislative Counsel's digest on legislative bills. The informative digest shall include the following:

(A) A concise and clear summary of existing laws and regulations, if any, related directly to the proposed action and of the effect of the proposed action.

(B) If the proposed action differs substantially from an existing comparable federal regulation or statute, a brief description of the significant differences and the full citation of the federal regulations or statutes.

(C) A policy statement overview explaining the broad objectives of the regulation and, if appropriate, the specific objectives.

(4) Any other matters as are prescribed by statute applicable to the specific state agency or to any specific regulation or class of regulations.

(5) A determination as to whether the regulation imposes a mandate on local agencies or school districts and, if so, whether the mandate requires state reimbursement pursuant to Part 7 (commencing with Section 17500) of Division 4.

(6) An estimate, prepared in accordance with instructions adopted by the Department of Finance, of the cost or savings to any state agency, the cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4, other nondiscretionary cost or savings imposed on local agencies, and the cost or savings in federal funding to the state.

For purposes of this paragraph, “cost or savings” means additional costs or savings, both direct and indirect, that a public agency necessarily incurs in reasonable compliance with regulations.

(7) If a state agency, in proposing to adopt, amend, or repeal any administrative regulation, makes an initial determination that the action may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall include the following information in the notice of proposed action:

(A) Identification of the types of businesses that would be affected.

(B) A description of the projected reporting, recordkeeping, and other compliance requirements that would result from the proposed action.

(C) The following statement: “The (name of agency) has made an initial determination that the (adoption/amendment/repeal) of this regulation may have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states. The (name of agency) (has/has not) considered proposed alternatives that would lessen any adverse economic impact on business and invites you to submit proposals. Submissions may include the following considerations:

(i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.

(ii) Consolidation or simplification of compliance and reporting requirements for businesses.

(iii) The use of performance standards rather than prescriptive standards.

(iv) Exemption or partial exemption from the regulatory requirements for businesses.”

(8) If a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action will not have a significant, statewide adverse economic impact directly affecting business, including the ability of California businesses to compete with businesses in other states, it shall make a declaration to that effect in the notice of proposed action. In making this declaration, the agency shall provide in the record facts, evidence, documents, testimony, or other evidence upon which the agency relies to support its initial determination.

An agency’s initial determination and declaration that a proposed adoption, amendment, or repeal of a regulation may have or will not have a significant, adverse impact on businesses, including the ability of California businesses to compete with businesses in other states, shall not be grounds for the office to refuse to publish the notice of proposed action.

(9) A description of all cost impacts, known to the agency at the time the notice of proposed action is submitted to the office, that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.

If no cost impacts are known to the agency, it shall state the following:

“The agency is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action.”

(10) A statement of the results of the assessment required by subdivision (b) of Section 11346.3.

(11) The finding prescribed by subdivision (c) of Section 11346.3, if required.

(12) A statement that the action would have a significant effect on housing costs, if a state agency, in adopting, amending, or repealing any administrative regulation, makes an initial determination that the action would have that effect. In addition, the agency officer designated in paragraph (14) shall make available to the public, upon request, the agency’s evaluation, if any, of the effect of the proposed regulatory action on housing costs.

(13) A statement that the adopting agency must determine that no reasonable alternative considered by the agency or that has otherwise been identified and brought to the attention of the agency would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the proposed action.

(14) The name and telephone number of the agency representative and designated backup contact person to whom inquiries concerning the proposed administrative action may be directed.

(15) The date by which comments submitted in writing must be received to present statements, arguments, or contentions in writing relating to the proposed action in order for them to be considered by the state agency before it adopts, amends, or repeals a regulation.

(16) Reference to the fact that the agency proposing the action has prepared a statement of the reasons for the proposed action, has available all the information upon which its proposal is based, and has available the express terms of the proposed action, pursuant to subdivision (b).

(17) A statement that if a public hearing is not scheduled, any interested person or his or her duly authorized representative may request, no later than 15 days prior to the close of the written comment period, a public hearing pursuant to Section 11346.8.

(18) A statement indicating that the full text of a regulation changed pursuant to Section 11346.8 will be available for at least 15 days prior to the date on which the agency adopts, amends, or repeals the resulting regulation.

(19) A statement explaining how to obtain a copy of the final statement of reasons once it has been prepared pursuant to subdivision (a) of Section 11346.9.

(20) If the agency maintains an Internet Web site or other similar forum for the electronic publication or distribution of written material, a statement explaining how materials published or distributed through that forum can be accessed.

(21) A statement that the agency shall provide, upon request, a description of the proposed changes included in the proposed action, in the manner provided by Section 11346.6, to accommodate a person with a visual or other disability for which effective communication is required under state or federal law and that providing the description of proposed changes may require extending the period of public comment for the proposed action.

(b) The agency representative designated in paragraph (14) of subdivision (a) shall make available to the public upon request the express terms of the proposed action. The representative shall also make available to the public upon request the location of public records, including reports, documentation, and other materials, related to the proposed action. If the representative receives an inquiry regarding the proposed action that the representative cannot answer, the representative shall refer the inquiry to another person in the agency for a prompt response.

(c) This section shall not be construed in any manner that results in the invalidation of a regulation because of the alleged inadequacy of the notice content or the summary or cost estimates, or the alleged inadequacy or inaccuracy of the housing cost estimates, if there has been substantial compliance with those requirements.

SEC. 3. Section 11346.6 is added to the Government Code, to read:

11346.6. (a) This section shall only apply to the following proposed regulations:

(1) Regulations proposed by the Department of Rehabilitation.

(2) Regulations that must be submitted to the California Building Standards Commission that pertain to disability access compliance, including, but not limited to, regulations proposed by the State Fire Marshal, the Department of Housing and Community Development, the Division of the State Architect, and the California Commission on Disability Access.

(3) Regulations proposed by the State Department of Education that pertain to special education.

(4) Regulations proposed by the State Department of Health Care Services that pertain to the Medi-Cal program.

(b) Upon request from a person with a visual disability or other disability for which effective communication is required under state or federal law, the agency shall provide that person a narrative description of the additions to, and deletions from, the California Code of Regulations or other publication. The description shall identify each addition to or deletion from the California Code of Regulations by reference to the subdivision, paragraph, subparagraph, clause, or subclause within the proposed regulation containing the addition or deletion. The description shall provide the express language proposed to be added to or deleted from the California Code of Regulations or other publication and any portion of the surrounding language necessary to understand the change in a manner that allows for accurate translation by reading software used by the visually impaired.

(c) The agency shall provide the information described in subdivision

(b) within 10 business days, unless the agency determines that compliance

with this requirement would be impractical and notifies the requester of the date on which the information will be provided.

(d) Notwithstanding any other law, if information is provided to a requester pursuant to this section, the agency shall provide that requester at least 45 days from the date upon which the information was provided to the requester to submit a public comment regarding the proposed regulation. The agency shall not take final action to adopt the regulation until the requester has submitted a public comment or the extended 45-day comment period expires, whichever occurs first.

(e) The requirements imposed pursuant to subdivisions (b) to (d), inclusive, for a proposed regulation described in subdivision (a) shall apply to an agency only for purposes of that proposed regulation until the proposed regulation is filed with the Secretary of State or until the agency otherwise concludes the regulatory adoption process.

(f) (1) Not later than February 1, 2014, an agency that adopted a proposed regulation subject to the requirements of this section shall submit a report, for both the 2012 and 2013 calendar years, to the Governor, the fiscal committee in each house of the Legislature, and the appropriate policy committee in each house of the Legislature, that specifies the number of requests submitted for a narrative description of a proposed regulation, and the number of narrative descriptions actually provided pursuant to this section.

(2) The report shall be submitted to the Legislature in the manner required pursuant to Section 9795.

(3) The reporting requirement imposed by this subdivision shall become inoperative on February 1, 2018, as required pursuant to Section 10231.5.

(4) It is the intent of the Legislature to evaluate the reports submitted pursuant to this subdivision to determine whether the requirements of this section should be applied to all regulations adopted by all agencies.

SEC. 4. Nothing in this act shall be construed to limit the duty of a state agency to meet its obligations pursuant to Title II of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12131 et seq.) or Section 11135 of the Government Code to take appropriate steps to ensure that communications with participants and members of the public with disabilities are as effective as communications with others.